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TO: All Chief Elected Officials and
WIA Steering Committee Members

FROM: Craig E. Hartzer, Commissioner

DATE: September 20, 1999

SUBJECT: DWD Communications Policy: 1999 - 10
Contracted Training under the
Workforce Investment Act of 1998

Re: Workforce Investment Act Funding

Purpose: The purpose of this communication is to provide policies and guidelines for the local Workforce Investment Boards (WIBs) to use in contracting for adult and dislocated worker training under Title I of the Workforce Investment Act.

Rescissions: None -- This policy applies to contracted training under the Workforce Investment Act (WIA). DWD Communication 97-30 addresses on-the-job training under the Job Training Partnership Act (JTPA). During the transition from JTPA to WIA, these policies will be concurrent, each applying to the specific activities authorized under the respective laws.

Content:

I. Introduction and Overview

An intent of the Workforce Investment Act of 1998 is to provide more customer choice in selecting training providers. The Individual Training Account (ITA) process is the mechanism identified to accomplish this objective. Under ITAs the approved trainee may select his/her training provider from a statewide list of approved training providers.

The Workforce Investment Act and the Interim Final Rules provide for exceptions to the ITA process under certain circumstances. The Interim Final Rules indicate that the exceptions to ITAs are to be used infrequently. The intent of the Act is to reform the local service delivery system by moving towards a customer-choice driven system and away from the current practice of contracting for blocks of services and then identifying participants to fill the classes.

Three specific situations are identified as approved exceptions to ITAs:

- A. On-the-Job Training (OJT) and Customized Training (CT)
- B. Insufficient Numbers of Approved Training Providers (IATP)
- C. Special Populations (SP).

These three exceptions will be referred to as WIA contracted training. This policy will define each of these exceptions and provide guidelines for using them instead of ITAs.

Additional guidance may be found as follows:

- Workforce Investment Act of 1998
 - Title I Section 101 (8) Customized Training
 - Title I, Section 101 (31) On-the-Job Training
 - Title I, Section 122 (h) On-the-Job Training or Customized Training Exception
- Interim Final Rule
 - 20 CFR § 663.400 - 663.440
 - 20 CFR § 663.595
 - 20 CFR § 663.700 - 663.720

I.A. On-the-Job Training (OJT) and Customized Training (CT)

20 CFR § 663.430

Under what circumstances may mechanisms other than ITAs be used to provide training services?

(a) Contracts for services may be used instead of ITAs only when one of the following three exceptions applies:

(1) When the services provided are on-the-job training (OJT) or customized training;

Title I, Section 101 (8) Customized Training

The term "customized training" means training-- (A) that is designed to meet the special requirements of an employer (including a group of employers); (B) that is conducted with a commitment by the employer to employ an individual on successful completion of the training; and (C) for which the employer pays for not less than 50 percent of the cost of the training.

Title I, Section 101 (31) On-the-Job Training

The term "on-the-job training" means training by an employer that is provided to a paid participant while engaged in productive work in a job that-- (A) provides knowledge or skills essential to the full and adequate performance of the job; (B) provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and (C) is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the work experience of the participant, and the service strategy of the participant, as appropriate.

Title I, Section 122 (h) On-the-Job Training or Customized Training Exception

(1) In general.--Providers of on-the-job training or customized training shall not be subject to the requirements of subsections (a) through (e). (2) Collection and dissemination of information.--A one-stop operator in a local area shall collect such performance information from on-the-job training and customized training providers as the Governor may require, determine whether the providers meet such performance criteria as the Governor may require, and disseminate information identifying providers that meet the criteria as eligible providers, and the performance information, through the one-stop delivery system. Providers determined to meet the criteria shall be considered to be identified as eligible providers of training services.

Performance Data:

Local boards are required to collect performance data on OJT/CT providers. The performance data will include, at a minimum

- Completion Rates for all individuals participating in specific OJT or CT programs conducted by the provider
- Unsubsidized Employment Rate six months after the completion of the training program
- Wages for participants at six months after they complete the training program
- Local boards may require the submission of additional data that demonstrates the effectiveness of such training programs.

The Governor will set performance standards for OJT/CT providers for the three required performance measurements. The local boards must publish the OJT/CT Approved Training Providers through the one-stop delivery system in their area. A workgroup comprised of representatives of local areas and the state will work together in developing recommendations for OJT/CT performance standards that will be considered by the Governor before the standards are issued. This activity will occur before November 30, 1999. The performance standards will be issued before December 31, 1999 and will be effective for all OJT/CT contracts effective on or after January 1, 2000.

Local boards may waive the requirement for performance data upon a showing of good cause by the OJT/CT provider. The waiver may only be granted to an OJT/CT provider for their first year of OJT/CT under WIA. Thereafter, the performance data will be required and may not be waived. The local boards must establish policies defining good cause for waiving submission of the performance data.

Local boards are prohibited from contracting for OJT/CT services with an employer that has a history of failing to provide OJT/CT participants with continued, long-term employment. Participants' wages, benefits and working conditions must be equal to those provided to regular employees with similar length of services and duties. Local boards are not to enter into OJT/CT contracts with employers using these contracts solely as a method of obtaining subsidized employees for the short term or retaining employees on a long term basis with wages and benefits inferior to "regular employees".

OJT Contracting Requirements

- OJT must be provided by an employer in the public, private non-profit or private sector.
- The training must be for WIA participants or for the employer's employees who are not earning a self-sufficient wage as defined by the local board.
- The training must be for an "in-demand occupation" as defined in the local WIB plan.
- The training must result in long term employment opportunities for the participant.
- The trainees must be hired by the employer prior to the start of the OJT contract.
- The duration of the training must be established as part of the contract. The duration should be of sufficient length to ensure the acquisition of the skills by the participants while not being excessive in length. The local boards will make this determination based on the objectives of the training and the current skill levels of the participants. Local policies for determining duration must be documented in the local policies or plans.
- In the case of OJT contracts for employed workers, the OJT must relate to the introduction of new technologies, introduction to new products or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes as identified by the local board.

OJT Payments to Employers

OJT payments to employers are to compensate the employer for extraordinary costs associated with training participants and the costs associated with lower productivity of the participants. Employers may be reimbursed up to 50% of the wage rate of the OJT participant. Employers may not be reimbursed for "premium payment" to the OJT participant for such things as overtime, holiday pay, sick pay, shift differential, etc. The assumption is that during OJT the employer will incur extraordinary costs. The employer is not required to document such costs.

CT Contracting Requirements

- CT must be designed to meet the special requirements of an employer or a group of employers.
- The training must be for qualified WIA participants or an employer's employees who are not earning a self-sufficient wage as defined by the local board.
- The contract must include a commitment by the employer(s) to employ or continue to employ the participant after successful completion of the training.
- The training must be for an "in-demand occupation" as defined in the in the local plan.
- The duration of the training must be established as part of the contract. The duration should be sufficient length to ensure the acquisition of the skills by the participants while not being excessive in length. The local boards will make this determination based on the objectives of the training and the current skill levels of the participants. Local policies for determining duration must be documented in the local plans.
- In the case of CT for employed workers, the CT must relate to the introduction of new technologies, introduction to new products or service procedures, upgrading to

new jobs that require additional skills, workplace literacy, or other appropriate purposes as identified by the local board.

CT Payments

WIA payments for CT may not exceed 50% of the cost of the training. At least 50% of the total training cost must be paid by the employer(s).

I.B. Insufficient Numbers of Approved Training Providers (IATP)

20 CFR § 663.430

Under what circumstances may mechanisms other than ITAs be used to provide training services?

(a)(2) When the Local Board determines that there are an insufficient number of eligible providers in the local area to accomplish the purpose of a system of ITAs. The Local Plan must describe the process to be used in selecting providers under a contract for services. This process must include a public comment period for interested providers of at least 30 days.

The Interim Final Rule clearly states that IATP contracts are to be used infrequently. In addition, the IATP contracts shall not be used if the local plan does not address the process to be used for IATP contracts including the 30-day comment period.

Local boards are assigned the responsibility of determining that an insufficient number of training providers exist. They must address this issue and the associated processes in their local policies.

I.C. Special Populations (SP)

20 CFR § 663.430

Under what circumstances may mechanisms other than ITAs be used to provide training services?

(a)(3) When the Local Board determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization (CBO) or another private organization to serve special participant populations that face multiple barriers to employment, as described in paragraph (b) of this section. The Local Board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the special participant population to be served. The criteria may include:

- (i) Financial stability of the organization;*
- (ii) Measures appropriate to the program including program completion rate; attainment of skills, certificates or degrees the program is designed*

to provide; placement after training in unsubsidized employment; and retention in employment; and
(iii) How the specific program relates to the workforce investment needs identified in the local plan.

(b) Under paragraph (a)(3), special participant populations that face multiple barriers to employment are populations of low-income individuals that are included in one or more of the following categories:

- (1) Individuals with substantial language or cultural barriers;*
- (2) Offenders;*
- (3) Homeless individuals; and*
- (4) Other hard-to-serve populations as defined by the Governor.*

While the Act and Interim Final Rule allow for contracted training for SP, it is clearly stated that this exception is to be used infrequently. Training providers under the SP exception must still qualify as eligible training providers and should be on the statewide list of eligible training providers. (Please note that this pertains to training as defined under WIA, not intensive services.)

The federally mandated categories for special populations include individuals with substantial language or cultural barriers, offenders, and homeless individuals. The Governor has also defined special participant populations to include individuals with disabilities as a hard-to-serve population.

It is also clear from the Interim Final Rule that the local boards are to determine if a contract for SP is appropriate and how to measure "demonstrated effectiveness." Each board should create policies that provide guidance for these tasks.

II. Contracting Requirements

At a minimum, the following points should be included in all contracts for WIA contracted training:

- Identification of the parties involved in the contract
- The beginning and ending dates of the contract
- Identification of the specific funding sources
- The total training hours
- The rate of reimbursement and the total reimbursement
- Identification of targeted group to be trained and a listing of the individual participants
- The occupation for which the participants are being trained or the specific job skills that the participants are to acquire
- When the contract includes employment (OJT & CT) and when a collective bargaining agreement covers the positions for which people are being trained, the bargaining unit must be identified and an official of the bargaining unit must sign off on the agreement

- Identification of a grievance procedure that will be used relating to terms and conditions of employment
- Identification of additional services being provided by any party to the contract that relate to the participant's ability to successfully complete the training
- Concerning OJT, identification of the employer's responsibility to provide orientation and safety training to the participant
- Audit rights and access to records
- Record retention requirements
- Default clauses for non-performance and convenience
- Concerning OJT/CT, compliance with relative programs. This should include specific references to labor standards, benefits, non-discrimination, non-sectarianism, lobbying restrictions and political activity restrictions.
- Modification methodology
- Non-assignment of duties language
- Payment and delivery terms (for OJT, time/attendance records must be maintained)
- Means for evaluation of the participant and the participant's progress in the training
- Identification of the trainers by name and title.

The above listing of "points to be included" is not all-inclusive, but serves as an initial guideline. Furthermore, these points are not intended to replace or supersede mandates and guidelines in federal and state laws and regulations regarding procurement and contracting. The points are an initial listing of items that should be addressed in a WIA contract for training.

Effective Date

July 1, 1999

Ending Date

June 30, 2004

Action

Local policies and actions concerning WIA contracted training must follow the policies and guidance in this communication. Appropriate Workforce Investment Board members and service providers should be apprised of this communication.